

## REMARKS

We are in receipt of the Office Action dated June 10, 2003, and the above Amendment and following remarks are made in light thereof.

Claims 1-7 are pending in the application. Pursuant to the Office Action, claims 1-7 stand rejected under 35 U.S.C. 112 for indefiniteness. Claims 1-7 stand rejected under 35 U.S.C. 103 as being unpatentable over either Marti GB 573,204 or Brass DE 844,128 in view of Litchfield, US 1,207,947 (for claims 1-3), and further in view of Wilbur US 284,933 (for claims 4 and 5), or Ping US 6,116,124 (for claims 6 and 7).

Before addressing the examiner's rejections, Applicant notes that the Office Action does not include consideration of the references cited in the Information Disclosure Statement submitted by the Applicant on December 13, 2001. For the convenience of the examiner, a copy of the Information Disclosure Statement of December 13, 2001 accompanies this Amendment. The Applicant respectfully requests the examiner to review the Information Disclosure Statement and to initial the List of References to indicate his consideration thereof.

The present invention is directed to a self-sizing adjustable pliers for single-hand use. Prior art adjustable jaw pliers invariably require two-hands to manipulate the pliers to adjust the spacing between the jaws in order to accommodate work pieces of various sizes. More specifically, to adjust the spacing between the jaws, the prior art adjustable pliers require the user to grip one handle in each end to cause a pivot pin secured to one handle to move along a slot in the other handle.

By way of the present invention, single-handed operation is achieved by providing a spring in the slot that captures the pivot pin, with the spring biasing the jaw members towards each other. In a preferred embodiment, the inventive pliers include a stop pin on one handle that cooperates with a series of notches or serrations on the other handle so that, after the jaws have

been adjusted to accommodate the work piece, the stop pin engages an appropriate notch to prevent the pivot pin from moving long the elongated slide in a direction that would increase the distance between the jaws. A new independent claim 8 directed to this preferred embodiment has been added by way of the present amendment.

The examiner asserts that the claimed invention is obvious over either Marti or Brass in view of Litchfield. Brass is directed to a typical channel-pipe adjustable pliers. The Brass pliers include a pawl b which, when engaged with a serration in one of the handle members, prevents the narrowing of the space between the jaws. In contrast to the present invention, the pliers disclosed in Brass are not self-sizing and do not permit one-handed operation. Specifically, in order to adjust the spacing between the jaws and the Brass pliers, first the pawl must be moved out of engagement with a tooth, and then a handle taken in each hand in order to slide the pivot along the slide to the appropriate position, maintaining that position, and then engaging the pawl with the appropriate tooth in order to prevent the jaws from moving towards each other.

Marti also disclosed a conventional channel-type adjustable pliers. The only difference between the pliers disclosed in Marti and those in Brass is the pawl that Brass uses for maintaining the jaws in a particular position. Otherwise, Marti also requires two hands in order to adjust the jaws to the desired spacing.

Litchfield is directed to a tool having movable jaws for gripping or cutting an object located there between. It includes a first handle 8 with an integral jaw 1 and a second jaw 2 pivotally connected the first handle 8 by a pivot bolt 9, and a second handle 15 pivotally connected to the jaw 2 by a pivot bolt 16. The pivot bolt 9 is received in a slot 10 and the handle 8, with coil spring 11 interposed between the pivot bolt 9 and the outer extremity of the slot 10. By separating the second jaw from the handle 15, Litchfield has provided a tool that progressively closes and locks the jaws about a work piece by actuation of the handle.

Specifically, movement of the handles produces only a partial closing movement of the jaws, the entire closing movement of the jaws being produced by successive relative contracting and expanding movement of the handles. Thus, a relative step-by-step movement is imparted to the jaws, the coil spring 11 acts against the pivot 9 and the outer end of the slot 10 to move the handle 8 so as to restore the pivot 9 to the inner extremity of this slot to initiate further closing action of the jaws upon manipulation of the handles.

Applicant submits that combining Litchfield with either Marti or Brass to achieve the present invention employs the improper use of hindsight. It has long been established that an approach to the obviousness inquiry such as that used by the Examiner is impermissible. Over 35 years ago, the CCPA stated:

It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art. In re Wesslau, 147 USPQ 391, 393 (CCPA 1965).

More recently, the Federal Circuit has strongly cautioned against such picking and choosing:

Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references

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Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight. In re Dembiczak, 50 USPQ 2d 1614, 1617 (Fed. Cir. 1999).

In the present case, there would be no incentive to include the spring 11 from Litchfield with either of the pliers disclosed by Marti or Brass because the Litchfield tool utilizes spring 11 in connection with its mechanism for progressively closing the jaw members. There is no similar

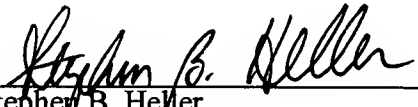
structure or purpose in either of the Marti or Brass pliers. Thus, the only incentive for combining these references is the teaching of the present application, which is clearly improper.

In addition, new independent Claim 8, with its inclusion of the stop pin that engages notches external to the elongated slot, is clearly not shown, even given the combination of Marti or Brass with Litchfield.

With respect to the rejection for indefiniteness, the Applicant has amended claims 1 and 2 was suggested by the examiner to appropriately refer to the "first" elongated member, rather than the second.

Accordingly, Applicant respectfully submits that this application is now in condition for allowance, and an early Office Action in this regard is earnestly solicited.

Respectfully submitted,

  
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VERSION WITH MARKINGS TO SHOW CHANGES MADE

Claims 1-3 have been amended to read as follows:

1. (Currently Amended)      An adjustable pliers comprising;

first and second elongated members, each elongated member comprising a handle, a jaw, and an intermediate portion between the handle and the jaw;

the intermediate portion of the first elongated member including an elongated slot and the intermediate portion of a second elongated member including a pivot pin that is slidably captured in the elongated slot, the [second] first elongated member being pivotable about the pivot pin to permit the jaws to be selectively opened or closed about a work piece and being slidable along the elongated slot to adjust the spacing between the jaws; and

a spring captured in the elongated slot and engaging the pivot pin so as to bias the jaw of the second elongated member toward the jaw of the first elongated member.

2. (Currently Amended)      The adjustable pliers of claim 1 wherein the second elongated member includes a stop pin in its

intermediate portion that is adapted to abut the intermediate portion of the [second] first elongated member in order to limit the degree to which the second elongated member can pivoted about the pivot pin.

3. (Currently Amended)      The adjustable pliers of claim 2 wherein the intermediate portion of the first elongated member includes a series of notches external to the elongated slot, so that the stop pin of the second elongated member nests in a notch when it abuts the intermediate portion of the first elongated member.